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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,764

11/14/2005

Filippo Bastia

38328

9211

116 7590 06/21/2007  
PEARNE & GORDON LLP  
1801 EAST 9TH STREET  
SUITE 1200  
CLEVELAND, OH 44114-3108

EXAMINER
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KASZTEJNA, MATTHEW JOHN

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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06/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/540,764

Applicant(s)

BASTIA ET AL.

Examiner

Matthew J. Kasztejna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/24/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 10-11 and 14-21 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,616,603 to Fontana.

In regards to claims 1-4, 10-11 and 14-21, Fontana discloses an anoscope for surgery and/or inspection comprising: a tubular body (2) having a distal blind end and a proximal open end; an inner light reflecting surface (7) located at said distal blind end; at

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least one slot (3) formed in said tubular body; a light source (6) placed in light reflection relationship with said inner reflecting surface (7), and a maneuvering handle (5) arranged to act on said proximal end of said tubular body (2) (see Figs. 1-3).

Claim 1 and 14-18 are rejected under 35 U.S.C. 102(e) as being anticipated by EP 1,234,539 to Gmbh.

**In regards to claims 1 and 14-18**, Gmbh discloses a disposable device for surgical operations on the arteria haemorroidalis (FIG. 1) comprising a retractor tube closed and rounded at the end (tube 1 in FIG. 1), which is provided upon its side surface with at least a window (7 in FIG. 1), a gripping handle; means to illuminate said window (light guide 10 in FIG. 2), said illumination means comprises a luminous source (LED 5 in FIG. 1) fixed in removable manner inside said handle (see FIG. 4 and paragraph 20: handle 2 including LED can be removed) and comprise at the level of the conjunction zone of the handle to the external end of the retractor tube, means to reflect the light supplied from said source and to allow that the said reflected light illuminates the internal portion of the retractor tube and particularly said lateral window (light guide 10 in FIG. 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1,234,539 to Gmbh in view of FR 2,623,078 to Gilles.

**In regards to claims 2-13**, Gmbh discloses a disposable device for surgical operations on the arteria haemorroidalis (FIG. 1) comprising a retractor tube closed and rounded at the end (tube 1 in FIG. 1), which is provided upon its side surface with at least a window (7 in FIG. 1), a gripping handle; means to illuminate said window (light guide 10 in FIG. 2), said illumination means comprises a luminous source (LED 5 in FIG. 1) fixed in removable manner inside said handle (see. FIG. 4 and paragraph 20: handle 2 including LED can be removed) and comprise at the level of the conjunction zone of the handle to the external end of the retractor tube, means to reflect the light supplied from said source and to allow that the said reflected light illuminates the internal portion of the retractor tube and particularly said lateral window (light guide 10 in FIG. 1). Gmbh is silent with respect to a specular parabola. Gilles teach of an analogous apparatus wherein a mirror is used as means to reflect light in a (see page 3, lines 29-32). The choice of a parabolic mirror as a specifically formed mirror comes within the scope of the customary practice followed by persons skilled in the art, especially as the advantages thus achieved can readily be foreseen. It would have been obvious to one skilled in the art at the time the invention was made to include a parabola in the apparatus of Gmbh, to distribute light more efficiently within the device as taught by Gilles.

Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1,234,539 to Gmbh in view of U.S. Patent No. 5,570,692 to Morinaga.

**In regards to claims 22-26**, Gmbh discloses a disposable device for surgical operations on the arteria haemorrhoidalis (FIG. 1) comprising a retractor tube closed and rounded at the end (tube 1 in FIG. 1), which is provided upon its side surface with at least a window (7 in FIG. 1), a gripping handle; means to illuminate said window (light guide 10 in FIG. 2), said illumination means comprises a luminous source (LED 5 in FIG. 1) fixed in removable manner inside said handle (see. FIG. 4 and paragraph 20: handle 2 including LED can be removed) and comprise at the level of the conjunction zone of the handle to the external end of the retractor tube, means to reflect the light supplied from said source and to allow that the said reflected light illuminates the internal portion of the retractor tube and particularly said lateral window (light guide 10 in FIG. 1). Gmbh is silent with respect to an ultrasonic probe which is partially projecting through an opening longitudinally obtained on the lateral wall of the retractor tube, in such a manner that the same probe results to be in contact with the anal mucosa. Morinaga teaches of an analogous device comprising an ultrasonic doppler blood flow detector used for hemorrhoid artery ligation having a hollow insertion cylinder which is enclosed at the distal end and open at the near end, and can be inserted through the anus; the cylinder has an ultrasound transducer in its interior wall, for detecting blood flow in the affected artery, and a ligation hole next to the transducer, through which the detected artery is ligated with ligation device, such as a curved needle or a wire for cautery (see Figs. 1-3). It would have been obvious to one skilled in the art at the time the invention was made to include an ultrasound probe in the apparatus of Gmbh, to effectively treat diseased tissue as taught by Morinaga.

**Conclusion**

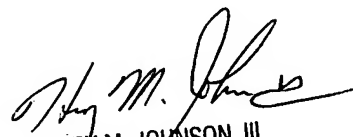
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK *pt*

6/15/7

  
HENRY M. JOHNSON, III  
PRIMARY EXAMINER